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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/118,675	07/17/98	BAR	C ROHO-6644US

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EXAMINER

NELSON JR, M

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 01/29/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/118,675

Applicant(s)

Bar et al

Examiner

Nelson

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-91 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 90-91 is/are allowed.
- ☒ Claim(s) 1-89 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☒ Notice of References Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

Information Disclosure Statement

1. The information referred to in the information disclosure statement filed October 26, 1998 has been considered as to the merits.

Drawings

2. The formal drawings filed July 17, 1998 have been objected to by the Drafting Review Branch. Note the attached Form PTO-948.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-89 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with indefinite language. **Examples** are as follows: In claim 1, it cannot be determined whether applicant intends to claim the combination of a backrest system and a chair, or the subcombination of a backrest system for a chair. Note that line 1 of the claim appears to set forth the subcombination, while lines 9-10 appear to set forth the

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combination. Similar instances of vagueness between the combination and the subcombination can be found throughout the claims. In claim 25, it is unclear what is being defined by the recitation "within at least five degrees of freedom". In claim 40, the support frame is set forth as being "movable toward or away from said post". The claim is lacking sufficient structure to support such functional language. Also in claim 40, is the support frame structure the same as the support frame? In claim 47, the "or" recitation fails to define the metes and bounds of the claim. In claim 47, "the support needs and proportions of an individual" lacks proper antecedent basis. Line 4 of claim 62 is grammatically vague. In claim 74, the "or" recitation fails to define the metes and bounds of the claims. In claim 78, "the backrest system" lacks proper antecedent basis. In claim 83, "said second portion" lacks proper antecedent basis.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. Claims 1-73 and 79-82 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-17 of copending Application No. 08/946,208. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: A backrest system

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Jay et al (5,593,211). Note the support chassis (36) and the attachment assembly (50).

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9. Claim 1, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Dinsmoor, III et al (5,556,168). Note the back support (110), support chassis (10, 20) and the attachment assembly (60).
10. Claims 18-21, 23-25 and 39, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Jay (5,593,211). Note the support chassis (36), the attachment assembly (50), the side plates (38), backing plate (18) and insert (12).
11. Claims 18-21, 23 and 39, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Dinsmoor, III et al (5,556,168). Note the back support (100), support chassis (10, 20), the attachment assembly (60), the side plates (22), support tubes (5), and backing plate (102).
12. Claims 40 and 41, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Jay (5,593,211). Note the support chassis (36).
13. Claims 40 and 41, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Dinsmoor, III et al (5,556,168). Note the back support (100) and support frame (10).
14. Claim 42, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Nishino (4,646,000). Note the tubes (11a, 11b), back support pad (44) and elbow joint (13, 15, 17).

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15. Claims 69-71, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Jay (5,593,211). Note the support chassis (50), backing plate (18), insert (12) and cover (30).

16. Claim 69, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Dinsmoor, III et al (5,556,168). Note the back support (100).

17. Claims 74 and 75, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Newkirk (2,928,686). Note the first section (30), second section (12), socket (14) and means for moving (28).

18. Claim 83, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Newkirk (2,928,686). Note the first section (30), second section (12) and stud (14).

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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20. Claim 43, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishino (4,646,000) in view of Hale (5,642,956).

Nishino discloses the claimed invention with the exception of the pad being attached to the elbow joint by a ball and socket joint.

Hale teaches the conventional concept of providing an assembly attached to an elbow joint by a ball and socket joint.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Nishino in view of the Hale by incorporating a ball and socket joint as an attachment means between the elbow joint and the pad. Such enhances adjustability of the assembly.

21. Claims 47 and 48, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishino (4,646,000) in view of Hale (5,642,956).

Nishino discloses the claimed invention with the exception of the pad being attached to the support tube by a ball and socket joint.

Hale teaches the conventional concept of providing an assembly attached to a support assembly by a ball and socket joint.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Nishino in view of the Hale by incorporating a ball and socket joint

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as an attachment means between the support tube and the pad. Such enhances adjustability of the assembly.

22. Claims 58-61, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (1,34,424) in view of Nishino (4,646,000).

Evans discloses the claimed invention with the exception of the pair of support tubes attached to a rear of the chair and extending vertically therefrom. In Evans, note the mounting assembly (A, B), elbow joints (D and joint between A and B), and the ball and socket joint (E).

Nishino teaches the conventional concept of providing a backrest assembly with a pair of support tubes attached to a rear of a chair and extending vertically therefrom

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Evans in view of the Nishino by incorporating the pair of support tubes attached to a rear of the chair and extending vertically therefrom. Such enhances structural stability of the assembly.

23. Claims 62-64, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin (3,293,671) in view of Jay et al (5,593,211).

Griffin discloses the claimed invention with the exception of the pair of support tubes attached to a rear of the chair and extending vertically therefrom.

Jay et al teaches the conventional concept of providing a backrest assembly with a pair of support tubes attached to a rear of a chair and extending vertically therefrom.

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It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Griffin in view of the Jay et al by incorporating the pair of support tubes attached to a rear of the chair and extending vertically therefrom. Such enhances structural stability of the assembly.

24. Claim 72, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Jay et al (5,593,211) in view of Lien (5,007,676)

Jay et al discloses the claimed invention with the exception of the cover being held in position by hook and loop fasteners.

Lien teaches the conventional concept of providing a pad with a cover being held in position by hook and loop fasteners.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Jay et al in view of the Lien by configuring the cover to be held in position on the pad by hook and loop fasteners. Such enhances selective, quick-release attachment and detachment of the cover from the pad.

25. Claim 73, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Jay et al (5,593,211) in view of Jay et al (5,062,677)

Jay et al (5,593,211) discloses the claimed invention with the exception of the cover being including an elastic band attached to an outer edge of the cover for holding the cover in place.

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Jay et al (5,062,677) teaches the conventional concept of providing a pad with a cover being including an elastic band attached to an outer edge of the cover for holding the cover in place.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Jay et al (5,593,211) in view of the Jay et al (5,062,677) by configuring the cover as including an elastic band attached to an outer edge of the cover for holding the cover in place. Such enhances selective, quick-release attachment and detachment of the cover from the pad.

26. Claim 77, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Newkirk (2,928,686) in view of Templeman (4,565,345)

Newkirk discloses the claimed invention with the exception of the first section of the ball being constructed from a nylon material.

Templeman teaches the conventional concept of providing a first section of a ball as constructed from a nylon material.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Newkirk in view of the Templeman by configuring the first section of the ball as constructed from a nylon material. Such enhances smooth movement of the ball.

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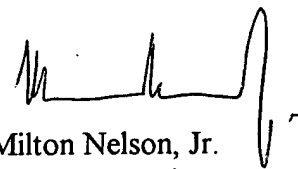
Allowable Subject Matter

27. Claims 90 and 91 are allowed.
28. Claims 76, 78-82 and 84-89 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
29. Note that claims 2-17, 22, 26-38, 44-46, 49-57 and 65-68 have a double patenting rejection applied thereto, but have not been rejected in view of prior art.
30. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is (703) 308-2117. The examiner can normally be reached on Monday-Thursday from 6:30 AM-4:00PM. The examiner can also be reached on alternate Fridays.

The fax number for this Group is (703) 305-3597.

mn
January 19, 1999


Milton Nelson, Jr.
Primary Examiner
Art Unit 3624